IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2524 OF 2004

IN

SUIT NO.2424 OF 2004

Ashoka Co-operative Society Ltd.
And others. ... Plaintiffs.

vs.

Powai Housing Development Pvt.
Ltd. And others. ... Defendants.

And

Bombay Municipal Corporation. ... Respondent.

Mr.F.D'Vitre with M.J.Humranwala i/b. Humranwala and Company, for Plaintiffs.

Representative of Defendant no.1 present.

CORAM: D.K.DESHMUKH,J.

DATED: 25th February, 2005.

P.C.:-

1. At the request of learned Counsel for the plaintiffs, names of defendant nos.2 to 17 are permitted to be deleted from this Notice of Motion. Similarly, name of respondent is also permitted to be deleted. The plaintiffs and defendant no.1 have agreed that for disposing of this Notice of Motion in following terms, no reasons are required to be recorded:-

(i) Notice of Motion is granted against the defendant no.1 only.

(ii) Notice of Motion is granted in terms of prayer clause (a)(i) subject to the condition that the stamp duty that may be payable for execution of power of attorney shall be paid by the plaintiffs-society and the plaintiffs society will execute an Indemnity Bond in favour of defendant no.1 indemnifying him from any liability in relation to the construction that plaintiffs-society will be raising on plot 'L-2' or portion thereof. The plaintiffs will address a communication to defendant no.1, communicating their willingness to pay stamp duty and shall also furnish indemnity bond. Within one week of receiving this

communication, defendant no.1 shall execute a power of attorney, as per mutually agreed draft.

(iii) Notice of Motion is also granted in terms of prayer clause (a)(ii) subject to the following conditions:-

(I)The Prothonotary and Senior Master of this Court at the expense of plaintiffs-society, shall appoint an Architect from the Panel maintained by the Prothonotary and Senior Master of this Court, for making an inventory of the construction which is existing on the plot 'L-2'. This work is directed to be completed as expeditiously as possible, in any case within a period of Six weeks from today.

(II) Plaintiffs-Society will file an undertaking in the Court that for any work that the plaintiffs society will carry on, on the plot 'L-2' or a portion thereof, the defendant no.1 shall not be held liable and that the plaintiffs society and the Architect who will be appointed, shall carry on the construction strictly according to the sanctioned building plan/amended building plan, and no deviation from the sanctioned building plan/

amended building plan, be made. This undertaking shall be filed by the plaintiffs-society within a period of Two weeks from today in the Court.

(iv) Notice of Motion is granted in terms of prayer clause (a)(iii). No Objection by an Architect of Defendant no.1 shall be issued after an inventory is taken and an undertaking is furnished as per the above order, within a period of two weeks thereafter.

(v) Notice of Motion is granted in terms of prayer clause (a)(iv) subject to the rider that any cost that may be incurred for securing right of way will be shared by the plaintiffs and defendant no.1 in the ratio of 60% by Defendant no.1 and 40% by the plaintiffs-society. A final order in this regard shall be passed at the disposal of the Suit and both the sides are entitled to make their respective submissions in this regard.

(vi) Notice of Motion is granted in terms of prayer clause (a)(v) subject to the following:-

(1)The defendant no.1 shall be free to secure an order from Mumbai Metropolitan Region Development Authority (M.M.R.D.A.), waiving the requirement of giving tenements to M.M.R.D.A., under the Scheme.

In case, such a release is not secured by the defendant no.1, the defendant no.1 shall also be free to enter into an arrangement with M.M.R.D.A., for providing tenements on some other plot. Failure of defendant no.1 in securing either one of the two above, the defendant no.1 shall be liable to pay construction cost (including purchase cost of T.D.R.) of the tenements to be constructed by the plaintiffs for being handed over to M.M.R.D.A. In that event, the plaintiffs would be entitled to take all necessary steps including purchase of T.D.R. for that purpose.

(2) The defendant no.1 will endeavour to get either waiver from M.M.R.D.A. Or acceptance of tenements on other plot than 'L-2', within a period of Six month from today. The defendant no.1 shall be at liberty to apply for extension of time, if necessary, with due notice to the plaintiffs. It is also clarified that if the plaintiffs face any difficulty in getting their building plan/ amended building plans sanctioned on this count, the plaintiffs would be entitled to apply for further orders to this Court after due notice to defendant no.1.

(vii) So far as prayer clause (a)(vi), (b) and (c) are concerned, no orders are necessary to be passed presently. The plaintiffs shall be at liberty to apply for these reliefs, if it become necessary.

(viii) So far as prayer clause (d) is concerned, the defendant no.1 shall file an affidavit within a period of Four Weeks from today, disclosing any third party rights that he might have already created in relation to plot 'L-2'. On such affidavit being filed, the plaintiffs shall be at liberty to approach the Court for adequate interim relief. It is further directed that the defendant no.1 shall not create any further third party right in plot 'L-2' without giving to the plaintiffs, four weeks advance notice. The plaintiffs shall be at liberty to approach the Court for appropriate interim relief after receiving the notice.

(ix) It is clarified that presently no order in terms of prayer clause (a)(vi) is being passed, because the representative of defendant no.1 who is present in the Court, has stated that enough F.S.I in so far as Plot 'L-2' is available, for completion of construction of the building of the plaintiffs to accommodate their

members.

Notice of Motion is disposed of.

25.2.2005 ---